



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

June 25, 2020

BY ECF

The Honorable Lorna G. Schofield
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *United States v. Stephen M. Calk*, 19 Cr. 366 (LGS)

Dear Judge Schofield:

The Government respectfully submits this letter to seek an adjournment of the trial, which is presently scheduled for September 3, 2020, in light of the persistence of the extraordinary circumstances caused by the COVID-19 pandemic.

The Government has conferred with counsel for the defendant regarding these concerns, and both parties agree that the COVID-19 pandemic continues to present extraordinary challenges and would thus jointly respectfully request that the Court adjourn the trial date. Assuming the Court is amenable to an adjournment, the defendant would respectfully request a trial date in October 2020 or as soon thereafter as practicable given the COVID-19 pandemic. While the Government will make every effort to proceed at the Court's direction, for the reasons set forth below the Government respectfully submits that a trial date in early 2021 may be a more prudent alternative, particularly given current projections about the anticipated spread of the virus.

The emergency conditions created by the COVID-19 pandemic continue to pose serious obstacles to holding a trial in this matter in September. As an initial matter, and as the Court is aware, on June 12, 2020 Chief Judge McMahon issued a standing order which included findings that "it remains impossible to conduct criminal proceedings in the courthouses of the Southern District" and that "given current conditions . . . it will be impossible to assemble venires for jury service . . . until September at the earliest, and perhaps not then." The same order continued the suspension of all jury trials in the District indefinitely and pending "further order of the court." Those findings alone, and the uncertainty they create for a potential September trial date, are already starting to present challenges to the parties, given that preparations for a trial of this magnitude and complexity need to begin in earnest at least several months prior to a trial date.

In addition to those concerns, a number of witnesses the Government expects to call at trial have informed the Government, through counsel, that they believe that traveling to New

York City and testifying in person would pose an extreme risk to their health and safety, and have thus requested that the Government seek an adjournment. In particular, the Government has spoken with counsel for five current or former employees of the Federal Savings Bank—including some of the most important witnesses in the case—many of whom reside out of state and would thus need to travel by airplane to New York for trial. Their counsel has reported that each of them has serious concerns for their health and safety, should they be required to participate in a trial in September. The risks giving rise to their concerns stem not only from the need to travel by plane but also from the need to then public transportation and stay at a hotel in the city, and to participate in the trial proceedings themselves, all of which could expose both them and their families to significant risk. Counsel for these witnesses has thus requested that the Government share these concerns with the Court and request an adjournment of trial.¹

In this respect, the Government also notes that multiple New York City institutions have already canceled events through the fall given significant concerns within the medical community about the risk of a resurgence. *See* Sarah Bahr, *Carnegie Hall and Lincoln Center Cancel Fall Performances*, The New York Times (June 18, 2020), *available at* <https://www.nytimes.com/2020/06/18/arts/music/carnegie-hall-lincoln-center-cancel-fall-virus.html> (noting that Carnegie Hall, Lincoln Center, Metropolitan Opera, and New York Philharmonic have all canceled their entire fall seasons); Matthew Futterman, *New York City Marathon Canceled Because of Pandemic*, New York Times (June 24, 2020), *available at* <https://www.nytimes.com/2020/06/24/sports/coronavirus-nyc-marathon-canceled.html> (noting cancelation of marathon scheduled for early November); *see also* Veronica Stracqualursi, *White House Adviser: Trump Administration Preparing for Possible Second Wave of Coronavirus in the Fall*, CNN.com (June 21, 2020), *available at* <https://www.cnn.com/2020/06/21/politics/trump-administration-preparing-coronavirus-second-wave-cnntv/index.html> (“White House trade adviser Peter Navarro said Sunday that the Trump administration is preparing for the possibility that a second wave of Covid-19 could hit the United States in the fall.”).

Moreover, as noted above, given the complexity of this case and the need for intensive trial preparation to commence substantially in advance of the scheduled trial date, the Government respectfully submits that it would be more efficient to adjourn the trial now to a date

¹ Moreover, just yesterday, Governor Cuomo ordered that persons entering New York State from certain other states will be required to quarantine for two weeks upon arriving in New York. *See* J. David Goodman, *N.Y. Will Impose Quarantine on Visitors from States with Big Outbreaks*, The New York Times (June 24, 2020), *available at* <https://www.nytimes.com/2020/06/24/nyregion/ny-coronavirus-states-quarantine.html>. This would mean that if a trial witness traveled to New York from one of the designated states, he or she would need to quarantine for two weeks before attending the trial, a circumstance that could lead to severely disruptive mid-trial adjournments. Although this order does not currently apply to Illinois, where these particular witnesses live, that could change if conditions in Illinois worsen, or if states in which other witnesses reside are designated.

slightly further away, rather than awaiting further developments this summer that may necessitate a further adjournment in any event.

Accordingly, the parties respectfully request that the September 3, 2020 trial date be adjourned. The defendant respectfully requests that trial be adjourned to a date in October 2020, or as soon thereafter as practicable given the COVID-19 pandemic. The Government respectfully requests that, given the uncertainty associated with holding a trial in the fall and the value of setting a date that is less likely to be subject to further adjournment, the trial be adjourned to early 2021.

Respectfully submitted,

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cc: Counsel of Record (via ECF)